

Senate Judiciary Committee  
Chair, Terry Murphy  
P.O. Box 200500  
Helena, MT 59620-0500

SENATE JUDICIARY

TESTIMONY NO. 1

DATE 2/11/13

SEN. BILL SB220

Re: SB 220

Dear Chairman Murphy and Members of the Senate Judiciary:

Please accept this letter as my testimony in support of SB 220. Although relieved by the Montana Supreme Court's ruling on this subject in late 2009, I believe that there is a need for passage of legislation which provides structure to allow physicians to understand how they can lawfully and properly assist terminally ill competent Montana citizens in aiding those individuals as they approach death. Without this structure, while some conscientious physicians may provide assistance, the majority, I fear will not engage in such assistance to the terminally ill, because they are uncertain in this new territory and concerned that they might face civil litigation by family members. In this case, the lack of a law withholds the guidance which SB 220 provides. I would ask that this legislation be passed.

I need to speak about two cases dealing with this subject which touched my life and the life of my family. One of my closest relatives was my father's cousin, my first cousin. She had been a nurse, served in England, France and Germany during WWII and then worked as a nurse in Wyoming. She and her husband retired to Oregon and after his death, she contracted a cancer, which was inoperable. Knowing she was terminal, she obtained the drugs which would have assisted her in dying when the pain from her disease became too great to bear. Making this choice brought her great comfort, knowing that she would not have to confront excruciating pain and put herself and her family through this type of an end to her life. Further, by seeking and obtaining the drugs, she opened a dialogue with her family about her death and also about her life. Being in a degree of control during these difficult times brought her comfort during the final stages of her life.

Like the vast majority of patients who have gone through the process of gathering the drugs and being prepared to confront death, in the end, my cousin did not use the drugs to affect her death. She died one night in her sleep. I believe that her knowledge that she had an element of control over when she might bring her life to an end actually assisted her in achieving a quality of life which she might not otherwise have enjoyed.

My wife and I were also close friends of a woman here in Helena who was stricken with inoperable cancer. She did not have the option of being able to find drugs which might have helped her in her final days. Her one desire was to die at home with friends and family at her side. We struggled to keep her at home, but in the end, during the final last days of her life, it was impossible to control her pain without having her in a hospital where drugs could be injected intravenously and where she could be brought to a state of unconsciousness by the use of drugs, which also aided in her death. Had this bill been available, given our discussions with our friend, we know she would have elected to seek out drugs to assist in her dying and I believe we know

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when she would have elected to have taken those drugs. She would have shortened her life by a few days, but the days which she would have eliminated would have been those when she was in such intense pain.

Although the Montana Supreme Court in late 2009, ruled that there was nothing in current state law which prohibited physicians from assisting terminally ill persons from dying, this had been the state of the law for decades and yet, despite the complete absence of regulation, there has been no reports of elder abuse in this area of assistance in dying. Likewise, in Oregon and Washington, which have laws similar to SB 220, there have been no reports of documented elder abuse, although those laws which do authorize aid in dying have existed for more than a decade in Oregon and for a shorter period of time in Washington.

If there is a concern about elder abuse, then clearly legislation such as SB 220 will address and avoid this potential. Requiring a showing of competency and requiring a witness to a terminally ill person's request for assistance in aid of dying and in requiring two physicians to attest to the terminally ill person's competency and the person's intent to seek such assistance, independent from third party pressure are sufficient and adequate safeguards against such abuse.

Fundamentally, I believe that every Montana citizen should have the opportunity to make choices about how much pain they are prepared to endure and to expose their family to at the end of their life. This is a personal choice and just as I would not compel anyone to chose to elect to terminate their own life early, so too, I submit the State of Montana should not force terminally ill, competent citizens to suffer because they lack the ability to obtain assistance in how they die. This is one of the central parts of our own Constitutional rights of privacy which I would urge this committee to respect and endorse.

I ask you to pass SB 220 with a favorable Do Pass recommendation from this committee.

Very truly yours,

Gough, Shanahan, Johnson & Waterman, PLLP

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c: Jen McLellan